IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

MISC. CIVIL APPLICATION NO.26 OF 2007

BPM Industries Ltd. (formerly known as
Bharat Pulverizing Mills Ltd.) : Petitioner

V/s.

Samarth Development Corporation : Respondent

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Mr.M.Sathe and Mr.Harilal Thakkar i/b. Mr.Babu Yohannan for the petitioner.

Mr.V.A.Thorat, Senior Advocate i/b. M/s.Mahimtura & Co., for the respondent.

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WITH

CIVIL APPLICATION NO.37 OF 2007

In

MISC. CIVIL APPLICATION NO.26 OF 2007

Samarth Development Corporation : Applicant
(Orig.Respondent)

V/s.

BPM Industries Limited (formerly
known as Bharat Pulverizing Mills Ltd.) : Respondent
(Orig.Applicant)

...

Mr.V.A.Thorat, Senior Advocate i/b. M/s.Mahimtura & Co., for the applicant.

Mr.M.Sathe and Mr.Harilal Thakkar i/b. Mr.Babu Yohannan for the respondent.

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CORAM : S.A.BOBDE, J.

DATE : AUGUST 09, 2007.

P.C.

1. This is an application under section 24 of the Code of Civil Procedure for transferring the respondent's suit for being tried with the petitioner's suit on the Original Side of this Court.

2. The petitioner has filed a suit on the Original Side of this Court, for a declaration that the lease executed by the respondent, inter alia, stands renewed for a further period of 50 years from 1.5.1999. The respondent on 24.9.2001 has filed a suit in the Small Causes Court being T.E.& R. Suit No.429/452 of 2001 claiming that the said lease has come an end and the petitioner is not entitled to protection of the Maharashtra Rent Control Act and should, therefore, be evicted. This suit is under section 41 of the Presidency Small Causes Courts Act. An earlier suit for eviction filed by the respondent under the Bombay Rent Act being R.A.E. & R. Suit

no.770/1421/98 against the petitioner is also pending in the Court of Small Causes.

3. The petitioner had taken out a Notice of Motion under section 10 of the Code of Civil Procedure for stay of the respondent's suit before the Small Causes Court. This Motion was eventually dismissed by the Appellate Bench of the Court of Small Causes. A Writ Petition against that order has also been dismissed by order dated 15.2.2007. Now the petitioner has moved an application for transfer of one of the respondent's suit from the Court of Small Causes for being tried by the learned single Judge of this Court along with the respondent's suit on the Original Side of this Court.

4. Mr.Sathe and Mr.Thakkar, the learned counsel for the petitioner, submitted that though the application under section 10 may have been dismissed, the suit ought to be transferred to this Court on the ground of convenience and in the interest of justice. The main reason, according to the learned counsel, is the fact that the parties are the same and that there would be certain common issues which require common evidence.

5. Several other contentions regarding power of the Court to transfer the suit was also raised, but it is not

necessary to dwell at length on this power which is conferred by section 24 of the Code of Civil Procedure. In fact, this Court has held that there is an extraordinary power to transfer certain cases conferred by the Letters Patent, vide Kavasji Pestonji Dalal v. Rustomji Sorabji Jamadar and another (AIR (36) 1949 Bombay 42). Having considered the matter at length, I am of view that it is not necessary to transfer the respondent's suit to this Court. The suit filed by the respondent is a suit under the Presidency Small Causes Courts Act for eviction of the petitioner on the basis that the lease has come to an end. That suit has been properly instituted under the provisions of the Presidency Small Causes Courts Act and the Small Causes Court alone has jurisdiction to try the suit between the landlord and the tenant under section 41. The suit filed before this Court is a suit for a declaration that lease in favour of the petitioner has been extended by a period of 50 years. This suit is also properly instituted on the Original Side of this Court.

6. As observed earlier, the application under section 10 has been rejected, inter alia, on the ground that the entire subject-matter is not common.

7. Mr.Sathe, the learned counsel for the petitioner, submitted that great inconvenience would be caused if one

of the suits is tried earlier than the other suit. That is really one of the considerations for a decision on an application under section 10. However, it is not a sufficient ground in the facts of this case for transferring the suit instituted in the Small Causes Court to this Court. Obviously, the earlier decision can be pointed out to the Court which has not yet decided the suit and, in any case, a proper reference can be made in an appeal. The other submission made on behalf of the petitioner that it is necessary to transfer the suit in the interest of justice cannot be accepted either. There is no reason whatsoever to consider the possibility of justice not being done, in accordance with law, in both the suits if they are decided as instituted. More over, both the Courts are situate in the city of Mumbai and it is not possible, therefore, to say that the suit should be transferred from the Small Causes Court to this Court on the ground of convenience or justice. There is no merit in the Revision Application which is dismissed.

8. At this stage, Mr.Sathe, the learned counsel for the petitioner, makes a prayer for continuing the ad-interim order already granted by this Court for a period of six weeks from today. Having regard to the circumstances of the case, the said ad-interim relief is continued for the period requested for by the petitioner. The learned

counsel for the petitioner states that the petitioner will give notice of any proceedings which they intend to take before the Supreme Court to the Advocate for the respondent in advance.

9. In view of the dismissal of the Revision Application, Civil Application No.37 of 2007 does not survive and the same stands disposed of.

S.A. BOBDE, J.